

## CHAPTER 26

### DISCIPLINE

*Refer to the collective bargaining agreement with AFGE Local 1770 for additional provisions pertaining to bargaining unit employees.*

#### 26-1. GENERAL.

The broad objective of discipline is to motivate employees to conform to acceptable standards of conduct and to prevent prohibited activities. Discipline is a part of the daily responsibility of the Employer and not merely the action taken at times when an employee deviates from acceptable forms of conduct. The Employer's most effective means of maintaining discipline is through the promotion of cooperation, of sustained good working relationships, and of the self discipline and responsible performance expected of mature employees.

#### 26-2. INVESTIGATING ALLEGED MISCONDUCT.

Once a supervisor receives an allegation of misconduct, he/she should conduct an investigation into the allegation. This can mean talking to any witnesses to the incident as well as interviewing the employee. Witness statements can be gathered in one of two ways. One is for the employee to write their account of what was witnessed. The other is for the supervisor to interview the employee and make a Memorandum of Record (MFR) of the conversation. Either form is acceptable, just insure that the employee initials and/or signs and dates any MFR, whether written themselves or by the supervisor. In order to do a complete and thorough investigation he/she must get the employees' side of the story. If the supervisor is interviewing a **BARGAINING UNIT EMPLOYEE** and that employee reasonably believes that disciplinary action may result from the investigation, he/she is entitled to a Union representative during questioning. This is referred to as **WEINGARTEN RIGHTS**. An employee must invoke his/her rights to a representative. It is incumbent upon the supervisor to inform the employee that they are under investigation and that the outcome could result in disciplinary action being taken. Once the employee has invoked his/her rights under Weingarten, no further questioning should take place without a representative being present. The supervisor should advise the employee that he/she should obtain representation and resume the meeting. If the employee states that his/her representative will not be available in a reasonable amount of time, then he/she should call his/her servicing MER Specialist for assistance in obtaining a

representative. The representative's role during the meeting may include asking clarifying questions and stating opinions. The representative may not answer questions on behalf of the employee, nor advise the employee not to answer questions. Additionally, their behavior during the meeting should not be grossly disrespectful or antagonistic.

#### 26-3. CHOOSING AMONG DISCIPLINARY ACTIONS.

a. Disciplinary actions fall into two categories: Informal and Formal. Informal disciplinary actions consist of oral and written counseling. Formal disciplinary actions consist of Reprimands, Suspensions, Changes to Lower Grade and Removals. Similarly, employee misconduct falls into two categories: Behavioral offenses which call for progressive discipline and misconduct which requires punitive sanctions to be imposed. Disciplinary action should be taken to correct behavior and to further the efficiency of the service. Disciplinary action should be taken in reasonable proximity in time to the occurrence of the event. For **BARGAINING UNIT EMPLOYEES**, supervisors must have the request for disciplinary action in the MER office, 30 calendar days from the date he/she obtains all of the information relied upon to take the action. If the supervisor does not comply with this provision of the contract, they must be prepared to provide a written explanation to the Union, upon request.

b. Informal disciplinary actions are taken by the supervisor, with or without assistance of the MER Specialist. They are typically done for infractions of a minor nature and are the first step in the progressive disciplinary process. They should **ALWAYS** be documented by MFR. Oral counselings are nothing more than a discussion with the employee of the infraction committed and a warning that if the behavior occurs in the future, it will be dealt with in a more formal fashion. The oral counseling should be annotated by MFR, with the employee signing and dating the MFR. He/She should also be provided a copy of the MFR for his/her records. A formal counseling is a MFR, written to the employee, detailing the infraction, what needs to be done to correct the infraction and a warning that further infractions may lead to formal disciplinary action. These oral and written counselings should be kept in the supervisor's file for a period not to exceed three (3) years. At the end of the three years, they should be destroyed. Oral and written counselings should be done in a timely manner, generally within 1 day of the infraction being committed or the supervisor discovering the infraction. **The counselings should be done in private, with only the supervisor and the employee present.**

c. Formal disciplinary actions are initiated by the supervisor and must be coordinated with the MER Specialist to

ensure regulatory and legal compliance. The MER Specialist will also advise on consistency of the penalty with others imposed for similar offenses. In taking formal action, the reasons for the reprimand or proposed action must be spelled out in the notice. They must be in sufficient detail to allow the employee to be able to respond to the charge or charges. Each charge must contain who, what, when, and where at a minimum. Prior to sending the action to MER, all back up documentation should be included. This will assist the MER Specialist in processing the action in a timely manner. In most cases, the supervisor must have interviewed the employee about the alleged incident prior to requesting the disciplinary action. An MFR of that interview must be included in the package requesting the action. Formal disciplinary actions are:

- (1) Reprimands
- (2) Suspensions
  - (a) Less than 14 days
  - (b) More than 14 days
- (3) Removals
- (4) Changes to Lower Grade

#### 26-4. SPECIFIC DISCIPLINARY SITUATIONS.

##### a. Fraud, Theft, Intentionally Dishonest Conduct.

(1) Strong and effective measures must be applied to those individuals who are found to have engaged in theft, fraud or other intentionally dishonest conduct against the Army.

(2) It is the policy of the Department of the Army that any civilian employee found to have engaged in theft, fraud, or other intentionally dishonest conduct will be considered for removal from Federal Service. Any lesser penalty will require justifiable mitigating circumstances (See Douglas Factors). It is the duty of all supervisors to ensure that this policy is enforced.

(3) This strong disciplinary posture is a necessary element in the Army's campaign against fraud, waste, and abuse. The majority of our civilian employees are honest, hard working, and fully aware of their fiduciary responsibilities to the public. We must assure that they are not required to tolerate or work with those who will not live up to this public trust.

(4) Statutes prohibit reprisal action against employees for disclosing information which the employee reasonably believes evidences mismanagement, gross waste of funds, abuse of authority, substantial and specific danger to public health or safety, or a violation of any law, rule or regulation.

b. Misuse of Government Vehicles or Aircraft.

Employees **who willfully** misuse or authorize the misuse of government owned/leased passenger motor vehicles or aircraft subject themselves to disciplinary action mandated by law. This is the only penalty, which has been codified by Congress, and it is a mandatory 30-day suspension. Specifically 31 USC 1349, mandates that an employee be suspended without pay for at least 30 calendar days, and when warranted, for longer, or removed from their position, for willfully misusing or authorizing the misuse of any government passenger vehicle.

26-5. DETERMINING APPROPRIATE PENALTIES.

a. Disciplinary actions under 5 USC 7503 and 7513 must not be arbitrary or capricious; the penalty selected may not be clearly excessive in relations to the offense (let the punishment fit the crime) and must be consistent with other penalties meted out for similar infractions. In short, it must be reasonable and consistent.

b. The **Table of Penalties** sets forth a range of discretionary penalties which the Department of the Army views as a general guide to supervisors in administering discipline to employees for particular offenses. In taking such disciplinary actions, supervisors should ensure comparable actions are taken for comparable offenses. The Table of Penalties is not meant to be an exhaustive listing of all offenses. Comparing the nature may derive appropriate penalties for unlisted offenses and seriousness of the offense to those listed in the table and the employee's previous history of discipline. While the table is provided only as a guide, experience indicates that the reasons for any deviation from the suggested penalties should be fully explained in the notice of proposed disciplinary actions. The fact that an offense is not listed in the table does not mean that the penalty cannot be imposed if the offense is committed. In such instances, a reasonable penalty can be determined through comparison with those listed. The servicing MER Specialist and the Labor Counselor will assist in determining the reasonableness of the penalty.

c. The use of a particular penalty is not mandatory simply because it is listed in the table, except for the misuse of government vehicle. Selection of an appropriate penalty involves

a responsible balancing of the relevant factors in the individual case. For example, even for offenses where removal is not listed for a first offense, removal for a first infraction may be assessed for an aggravated offense or multiple offenses. Similarly, removal is not required unless law mandates the penalty. Oral and written counselings are not considered formal disciplinary actions for the purpose of determining a first, second, or third offense; however, informal discipline may be considered when determining an appropriate penalty. A prior offense of any type may form the basis for proposing an enhanced penalty. Thus, a documented first offense of insubordination (where formal disciplinary action was taken), followed by a charge of fighting triggers the "SECOND OFFENSE" identified in the table of Penalties. In assessing penalties, consideration should be given to the "freshness" of the previous offense in relation to the current infraction. In other words, what was the time span between the first and second offense? Aggravating factors on which the agency intends to rely for imposition of an enhanced penalty, such as a prior disciplinary record or the egregiousness of the offense must be included in the notice of proposed discipline so that the employee will have an opportunity to respond to those factors.

d. In selecting the appropriate penalty, the deciding official must distinguish between misconduct, which warrants progressive disciplinary action, and misconduct, which warrants punitive disciplinary action. As a general rule, the action taken should be the least stringent which will get the message across to the employee that the behavior is unacceptable and will motivate him/her to improve. Conversely, with punitive discipline, the action proposed should be the strongest penalty warranted to preclude repeated acts of misconduct.

#### 26-6. FORMAL DISCIPLINARY ACTIONS.

a. When a supervisor determines that formal disciplinary action may be required, he should obtain all available information concerning the alleged misconduct. The supervisor will normally afford the employee an opportunity to explain his or her actions. Prior to beginning this portion of the investigation, the supervisor should advise the employee that disciplinary action is under consideration depending on his/her responses to the questions. If the employee presents a satisfactory explanation for his conduct, the matter will be closed and the employee notified. If the employee fails to provide a satisfactory explanation for his/her conduct, the supervisor will initiate formal disciplinary action.

b. The supervisor will send a request for a reprimand or proposed action to the servicing MER Specialist. A sample request is included. A separate MFR will be attached which includes a detailed description of the incident, witness

statements as well as a statement from the employee (if one was submitted). If the employee submitted no MFR, then there should be an MFR of the supervisor's discussion with the employee concerning the situation. Reprimands will be prepared by the servicing MER Specialist for the signature of the supervisor. The supervisor is responsible for reviewing the reprimand or proposed action to insure that the facts are accurate prior to signing it. The supervisor will deliver the letter to the employee, have him/her sign, date the receipt copy, and return the receipt copy to the MER Specialist. Reprimands will be sent to the CPOC for filing in the OPF. The MER Specialist will prepare a package for the deciding official containing the proposal, the evidence file, and a copy of the Douglas Factor worksheet.

c. The deciding official, who is identified in the proposal, will give full and impartial consideration to the oral and/or written reply presented by the employee and his/her representative (if any). When setting up the appointment for an oral reply, the deciding official should coordinate with the MER Specialist who will attend. The MER Specialist will make a summary of the oral reply and have it reviewed and approved by the employee. It will then be given to the Deciding official for use in making a decision on the proposed action.

d. The deciding official has the option to sustain the action in its entirety, reduce it to a lesser penalty, or cancel it entirely.

# **SAMPLE**

OFFICE SYMBOL

18 May 2001

MEMORMANDUM FOR CPAC, Labor Office, ATTN: MER SPECIALIST, Fort Bragg North Carolina 28310

SUBJECT: Request for Disciplinary Action

1. Request your office prepare a notice of proposed suspension for 30 calendar days for Mr. Denzel Washington, Supervisory Widget Maker, WS-2100-05.
2. Mr. Washington misused the government vehicle on 13 May 01. He was Absent Without Leave for 5 hours on 13 May 01. My investigation was concluded on 16 May 01. The documentation which forms the basis for the action is enclosed.
3. The undersigned will be the proposing official. Ms. Martha Washington, Chief, Widget Packing Division will be the deciding official.
4. You may call me at 396-XXXX if you need additional information.

TOM CRUISE  
SFC, USA  
Head Widget Counter